

## AIR TRAFFIC CONTROLLERS CAREER PROGRAM

SEPTEMBER 27, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DULSKI, from the Committee on Post Office and Civil Service, submitted the following

### REPORT

[To accompany H.R. 8083]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 8083) to amend title 5, United States Code, to provide for maximum entrance and retention ages, training, and early retirement for air traffic controllers, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

The amendment to the text of the bill strikes out all after the enacting clause and inserts the matter that appears in italic type in the reported bill.

The title is amended to conform it to the amendment made to the text of the bill.

An explanation of the amendments is contained hereafter in this report.

#### PURPOSE

The purpose of the legislation is twofold. First, it will provide a new career development training program and improved retirement for air traffic controllers who are unable to continue their duties as controllers. Second, in the interest of air safety, it will provide the Secretary of Transportation greater flexibility in the management of the air traffic control force.

#### STATEMENT

H.R. 8083, with the Committee amendment, is based on an official recommendation of the Secretary of Transportation. The bill was ordered reported by a unanimous record vote of 16 to 0.

In the conduct of the Committee's investigations and hearings on this legislation, the guiding consideration were the need to promote aviation safety, to provide the efficient control of air traffic, to provide the Secretary of Transportation with the tools necessary for needed flexibility in the management of the controller work force, and to insure equitable treatment of those personnel long exposed to the stresses of air traffic control.

The Committee by its action reaffirms the belief that any proposal to provide a new career training program and improved retirement benefits for Federal employees engaged in controlling air traffic is primarily a safety measure. The Federal Aviation Act demands of air transportation not ordinary safety, but "the highest possible degree of safety." Preferential treatment, while concerned with equity to the controller, is premised upon the primary concern of safety for the air-travelling public. Thus, the Committee's approach to the problem excludes from consideration, as irrelevant, arguments unrelated to aviation safety.

The Committee's study confirms what air traffic controllers and the Department of Transportation have been saying for years—that air traffic control is a young man's business. This conclusion springs from the experience and observations of those closely connected with the control of air traffic and is their way of saying that because of the natural forces of aging, magnified by the stresses of control functions, the productive and proficient life of the controller is substantially less than that which prevails in most other occupations. It is supported by numerous studies indicating that as the controller approaches age 50, his mental faculties of alertness, rapid decision making, and instantaneous reaction—demanding qualities which must endure unimpaired—begin a definite decline.

The significance of these findings is that marginal or unsatisfactory performance in any one of the critical elements of the control function constitutes a potential safety hazard to the air-travelling public. It is the consensus of the Committee that management must have available for timely use a means for bringing about separation from duties or earlier retirement of, and thus humanely relieving from service, employees prematurely incapacitated for safe and efficient control of air traffic. The Committee proposal is not a reward for services rendered or a retirement "bonus" that will benefit the controller without benefitting the air traffic control system. It clearly benefits both the controller and the system by enabling the Government to maintain the youthful controller work force it needs to attain an optimum standard of safety.

#### EXPLANATION OF MAJOR FEATURES

*Definition of Air Traffic Controller.*—The primary function of an air traffic controller is to facilitate the safe and efficient flow of air traffic in order to safeguard airmen and air travellers. The ever expanding aviation industry has made air traffic control work more complex and has increased the burden the controller must bear. Recognizing that not all those engaged in the control of air traffic are subject to the stress and strain of that profession, only those controllers directly engaged in the control of air traffic and their immediate supervisors

are covered by the bill. In order to insure uniformity in the application of the bill, the Secretary of Transportation is authorized to prescribe regulations to determine the applicability of the provisions of the bill to the employees of the Department. The committee considered but did not amend the definition to include either the second level supervisors or controllers at flight service stations.

*Training.*—The work of the controller involves stress factors inherent only in that profession. There is no allowable margin of error in the control of air traffic. Physical well being and peak effectiveness on the part of the controller is of utmost importance in the safety of the people who travel by air. There is no compromise.

Air traffic control work is unique also in other respects. The Department of Transportation is practically the sole employer of air traffic controllers and the remuneration he receives is relatively high when compared to other occupations with similar job qualifications. However, the work is highly specialized and the skills a controller acquires in his work have extremely limited value in other occupations.

As a result, if a controller were unable to continue his work, opportunities in other fields of employment are extremely limited. The salary, in most cases, would not be commensurate with what he earned as a controller.

With these considerations in mind, the proposed career program encompasses as a necessary element a new training program.

The bill authorizes training to be furnished to a career tenure air traffic controller with at least five years of air controller service, if the Secretary of Transportation determines that the controller must be separated from his duties because of medical reasons or his inability to maintain technical proficiency.

Under new sections 3381(a) and 3384, the training to be provided shall be (1) based on "length of service, previous occupational skills and education, training needs, and desire of the controller"; (2) sufficient "to assist the controller in qualifying for employment in another position," within or outside the Government; (3) shall be of 2 years duration or less; and (4) must be "with the written consent of the controller."

*Involuntary Separation for Retirement.*—The flexibility in the management of the controller workforce envisioned under the training provisions of the bill would be further strengthened by the provisions of this feature.

It would authorize the Secretary of Transportation to separate involuntarily a controller who is eligible for an immediate annuity if the Secretary determines that the separation is in the interest of aviation safety, efficient control of air traffic, or for the health of the controller.

The involuntary separation under this section would not become final without the consent of the controller until the last day of the second month in which the controller receives notification of the determination by the Secretary or, if a review is requested as explained below, on the last day of the month in which a final decision is issued by the board of review.

It should be noted that the 50 percent minimum retirement provision hereinafter explained would be applicable in an action for involuntary separation for retirement. Also, the mandatory retirement re-

quirements herein contained will not apply to a controller appointed prior to the date of enactment of the legislation.

*Review Procedures.*—The Committee, in granting the Secretary of Transportation the needed flexibility in the management of the air traffic control work force, recognizes that checks and balances over the flexibility granted in the bill are necessary. The Department of Transportation had recommended that the ultimate decision on the personnel action provided for in the bill should rest with the Secretary.

The Committee disagreed and decided that an impartial board would be necessary to review and make a final decision on any determination made by the Secretary under the bill.

The bill provides that the Secretary of Transportation must provide a controller subject to a determination under new section 3381 (a) or 3382 of title 5 with a written notice of the determination and the reasons therefor.

If the controller requests a reconsideration of the determination within 15 days after receipt of the notice, the Secretary shall convene a board of review consisting of three persons, one each designated by the controller, the Secretary, and the Chairman of the Civil Service Commission.

The board shall issue its decision, which is binding and final on the parties, not later than 30 days after it is convened by the Secretary.

*Retirement Provisions.*—The bill provides for the mandatory separation of a controller as defined in the bill upon his attaining 56 years of age. However, the Secretary of Transportation is granted the authority to exempt from such automatic separation requirement until age 61 a controller he deems to possess exceptional skills and experience. Subject to a 60-day notice of contemplated action, compulsory separation will occur at the end of the month in which the controller reaches age 56 or 61, as applicable. Failure to furnish timely notification precludes such separation, without the consent of the controller, until the end of the month following expiration of a 60-day notification. This provision, however, will apply only to controllers appointed by the Department of Transportation on and after the date of enactment of this legislation.

The bill also accords immediate entitlement to annuity to any employee who is either voluntarily or involuntarily separated from Federal employment (except by removal for cause on charges of misconduct or delinquency) after completing 25 years of service as an air traffic controller as defined in the bill, or after becoming age 50 and completing 20 years of such service. Thus, to be eligible for an immediate annuity and for the minimum 50 percent basic benefit provided in section 6 of the bill, an "employee" need not be a controller at the time he fulfills the service and/or age requirements. It is the Committee's judgment that the potential right of eligibility for early retirement and entitlement to a minimum basic annuity should vest after a controller has been subjected to the debilitating effects of air traffic control activity for a period of 25 or 20 years, respectively.

The Committee proposal is also designed to implement the early retirement provisions, and to make such early retirement economically practical.

At ages 45 to 50, an air traffic controller may reasonably be expected to have dependent children and to have achieved a standard of

living which necessitates a continuing income approximating that which he currently earns. Ordinarily, an individual who has achieved the standard of living of a typical controller will have attendant mortgage, taxes, insurance, and other fixed costs. Such a life style will likely have created other economic goals, such as the benefits of higher education for his children, or supplemental retirement income. In fact, as a member of the upper-middle socio-economic group he anticipates continuing to live in the manner to which he has been accustomed.

The controller who reaches the point of deterioration in skills is typically "young" by conventional work and retirement standards. He will also have another decade or so of physical well-being without the prospect of maintaining that standard of living through the exacting and onerous work of controlling air traffic. Many will have not only the desire, but the capacity, to pursue some other type of work activity and to maximize their earnings and ultimate retirement incomes.

However, the opportunity to find other employment will be limited because his work experience as a controller is quite narrow and does not qualify him for many alternative positions. Therefore, while the annuity is computed by using the general  $1\frac{1}{2}$ ,  $1\frac{3}{4}$ , and 2 percent formula of existing law, a minimum basic benefit of 50 percent of the retiring employee's high 3-year average salary is provided. Although the "employee" need not be a controller at time of retirement to be guaranteed such minimum benefit, he must have fulfilled the other requirements of service in the bill. It should be noted that if the "employee" has received training under the provisions of section 3 of this bill, the 50 percent minimum does not apply.

The annuity computed under this provision is not reduced by reason of the employee being under age 55 at date of separation.

*Age Limitations.*—The recommendation of the Secretary of Transportation included a provision authorizing a limitation to be prescribed for the maximum age beyond which original appointments could not be made to the position of air traffic controller.

The Committee bill does not include this provision. The question of granting authority to establish maximum age limitations for appointments in the executive branch is involved in another bill (H.R. 8085) now pending before the House. The provisions of that bill apply to appointments in the Executive branch generally and supersede the need for specific provisions relating solely to air traffic controllers.

#### STATUS OF THE AIR TRAFFIC CONTROLLER CAREER IMPROVEMENT PROGRAM AND AIR TRAFFIC CONTROL OCCUPATION

There is set forth below a report by the Department of Transportation relating to air traffic controllers as of May 31, 1971:

About one year ago, the Department of Transportation's Federal Aviation Administration established nine basic projects designed to alleviate the problems cited in the report of the Air Traffic Controller Career Committee. Special priority was assigned to these projects to ensure their rapid completion. Except for a very few unanticipated delays, we have completed all projects that did not require long-range study and development or legislation. The following briefly explains each basic project.

### *Staffing Standards*

Interim staffing standards for centers, terminals and stations have been developed and were applied in preparing the budget for fiscal year 1972. Work is on schedule for the development of engineered, customized standards for each type of air traffic control facility. An advance recruitment plan for controllers has been developed and the model tested. Air traffic forecasting methods have been developed for use in establishing staffing requirements. The development of a controller environmental workload design to stabilize variations in controller workloads is proceeding on schedule.

### *Recruitment and Selection*

The extreme manpower shortages have been significantly alleviated. Most of the regional Civil Service Commission registers for controllers now are filled with qualified applicants. Even flow controller recruitment plans to avoid "peak and valley" manpower flow have been developed and implemented. Plans to formally include junior colleges as a regular source for controllers are being negotiated now with the Civil Service Commission. Our aim is to have about 30 educational institutions participate in this, with about 15 having substantial minority student enrollment. We have to cancel the expansion of our "150" recruitment plan for lack of funds. The Civil Service Commission has printed and ready for distribution a new ATC recruiting announcement. Two recruitment films have been produced. One of them is ready for distribution, and the second film is in the final editing process. Display kits for Equal Employment Opportunity recruiters have been distributed. Two batteries of an occupational knowledge test have been developed for controllers who enter at the GS-9 level. Final validation is planned during June 1971 before submission to the Civil Service Commission for approval. An evaluation of air traffic controller selection techniques is being conducted. Current approaches to selection have been analyzed and other possible techniques identified. A field test of alternative techniques has just been completed, with almost 1,000 controllers participating. After the tests are scored and the data analyzed, the final report and recommendations will be prepared—probably in December 1971. New procedures to improve the identification of first-line supervisors have been developed and are being considered for implementation.

### *Training*

There were 488 developmental "en route" controllers trained through the interim manual upgrade program. The FAA Academy at Oklahoma City initiated this program to help alleviate the backlog of developmental controllers who were receiving little or no "upgrade" training because of the shortage of journeyman controllers. Training upper level developmental controllers using radar simulation capability at our facility at the National Aviation Facilities Experimental

Center at Atlantic City is expected to produce 180 developmental controllers as of June 30, 1971. A totally new national "en route" training program was developed and implemented at the FAA Academy. By June 30, 1971, over 900 developmental controllers will have enrolled in this new training program. We also are seeking approval of a training plan for terminal operations similar to the national "en route" training program.

A completely new program of supervisory and middle management training courses is under way now at the new FAA Management Training School on the campus of Cameron State College, Lawton, Oklahoma. Prototype courses were conducted, and regular classes are now under way. Our schedule calls for 264 supervisors and middle managers to be receiving training at all times. We anticipate that approximately 3,000 supervisors and 600 middle managers will receive training the first year.

#### *Career Progression*

Controller career legislation submitted to the last Congress and resubmitted to this Congress would authorize second career training and "early retirement" for controllers. As to higher level positions, a new agency-wide program for identification, selection, and development of managers and executive personnel is being developed. Probably, the program will begin with a limited number of selected key FAA positions. Plans for selecting and developing candidates for the positions of Associated Administrator, Regional Director, and Executive Officer are being developed.

#### *Compensation*

A number of alternative approaches to classifying controllers at en route air traffic control centers—the most controversial area—were analyzed. The result was a determination that a long-range, systematic study of the problems must be undertaken.

#### *Working Conditions*

Environmental improvements at air traffic facilities continue. Sixteen new automation wings now are under construction, and contract bids are being considered on two others. Improvements have also been completed in numerous other air traffic control facilities. Medical clinics at en route centers are being designed. Approximately 12 en route centers and the 4 new FAA regions are programmed to have flight surgeons and medical equipment in fiscal year 1972. Instructions and procedures have been implemented to improve the overall quality and consistency of controller physical examinations.

#### *Labor Relations*

Since the issuance of Executive Order 11491, training has been given to over 5,200 supervisors and managers. A total of 8,200 supervisors and managers are scheduled to receive briefings. The Labor Relations Handbook is in final draft and will

be issued in August 1971. Designs for posters summarizing agency policy have been reviewed, and text is in the clearance process.

#### *Employee-Management Communications*

The agency has mounted a two-pronged effort to improve employee-management communications. A major study of the techniques used to communicate information to employees was conducted, and resulted in significant changes now being implemented. A new monthly employee magazine, *FAA WORLD*, is now in its sixth edition. The *FAA* weekly *INTERCOM* has been revamped. New bulletin board displays are being planned, and a new closed-circuit television program is being developed. In addition, a plan to develop and implement a more effective communications/work environment program is under way. This program is aimed at improving both relations between levels of management and between management and employees.

#### *Human Factors Research*

The *FAA* is developing an agency-wide plan for human factors research and this plan should be completed in September 1971. A related manpower and personnel information system should be in full operation with a limited data base in 1973. Air traffic controller performance standards, now being developed under contract, should be completed in mid-1972. A stress study relating to shift rotation is scheduled to be initiated in August 1971.

### THE AIR TRAFFIC CONTROL OCCUPATION

The Air Traffic Control System—in fact, the National Airspace System—is basically a system of men. The human element is the unique ingredient that makes the system work, and work safely. The successful performance of the air traffic control duties is of critical importance to the immediate safety of millions of people—virtually everyone who flies in any capacity and many other people on the ground. Both in scope and in the nature of the duties, the occupation is unique in the Federal Service.

We are now embarking on a new decade, one that follows on the heels of a decade in which air traffic activity exceeded all estimates. Our system today requires large infusions of resources, both human and fiscal. The 91st Congress enacted the Airport and Airway Development Act of 1970. This law makes available billions of dollars for the decade of the Seventies—for hardware and concrete. As important as these elements are, without men there could be no system for the orderly and safe movement of air traffic in this country.

The air traffic control specialist brings the necessary human skills to this equation of men and machine. He is a central element in the National Airspace System, on which rests the safe and expeditious movement of air traffic in the United States now and for the immediate future. This system in-

cludes the aircraft and the pilots who guide them, the airspace through which they travel, the airports and the men who operate them, the facilities and equipment with which the controller performs his duties, the maintenance technicians who keep this equipment functioning, and finally, the organization which supports, directs and coordinates the air traffic system—The Department of Transportation's Federal Aviation Administration. The current and continuing work situation of the controller can only be appraised with this perspective.

### *The Job of the Air Traffic Controller*

The principal objective of air traffic control work is to ensure the safe, orderly and rapid movement of aircraft through the nation's airspace. To accomplish this, air traffic controllers advise, inform, and guide pilots before and during flight. They work through a vast communications network that links them directly to pilots and to each other.

Air traffic controllers provide a wide variety of weather, navigational and other valuable flight information to pilots. They assist pilots who are lost or in difficulty. They initiate search and rescue action for aircraft that fail to report within stated time limits. Along the airways and around airports, they keep aircraft properly separated by giving pilots their speed, altitude and heading. Pilots rely heavily on the information, advice, and guidance provided by the controllers. Responsibility for life and property is a significant characteristic of this occupation.

Air traffic patterns and situations constantly change. To keep a variety of aircraft of different speeds and performance characteristics separated and on course, air traffic controllers must adapt rapidly to those changing situations. They must coordinate their plans and actions with each other while considering the plans and actions of pilots. They must think, speak, listen and act almost simultaneously, often for extended periods of time. Even under very stressful circumstances, they must sound calm and unhurried to avoid disturbing a pilot.

Air traffic controllers must hold a certificate for their work. Certification requires a knowledge of meteorology, air navigation, standard communication procedures, types and uses of aids to air navigation and regulations governing air traffic. Air traffic controllers also must be fully checked out for the work in the particular facility to which they are assigned. Air traffic controllers also must meet rigid and demanding standards of physical health. Annually, they are re-examined. Failure to meet the standards for retention means disqualification from active control of air traffic.

### *The Physical Context of Control Work*

Occupational stress and its effects on the health and productivity of people are of concern in a number of occupations.

Probably, this subject receives more publicity and more discussion in connection with the air traffic controller career field than any other, particularly during the past ten years. Many people with varying qualifications have spoken and written extensively about this. They cite the weighty responsibilities, the emotional pressures, the sustained demands for intense concentration, the mental agility, the need for rapid and accurate decision-making, and the need for clear, authoritative verbal communication. These are now widely recognized attributes of the air traffic controller's job. Air traffic control, by its nature, requires shift work and is subject to widely fluctuating workload—"peaks and valleys". In complex facilities, a disproportionately large amount of peak traffic requires an all-out work pace of the controller.

The controllers themselves are convinced that the demands of their job are so great that only young, healthy adults can consistently do a safe, competent job of controlling the steadily growing volume of air traffic. A widely accepted premise among the air traffic controller work force is that the accumulated stress of performing this job is a career-limiting condition, causing many controllers to be unfit for their job by age 40, and nearly all controllers to be unfit by age 50. Yet, scientifically and officially, what is referred to in lay terms as "burn-out" has no formal recognition.

An examination of the available data and literature on the subject of stress, age, occupation, and so forth indicates that a time in life occurs for all that some have referred to as a "phenomenon" or as "burn-out." That condition is believed to apply to air traffic control specialists.

We must recognize that in every human being's span of life, a point is reached where he can no longer perform mental and physical activities or combined activities with the same excellence previously attained. When an air traffic control specialist reaches this point, and his specific duty involves the actual control of aircraft, a potential safety compromise is entered into the picture. The man recognizes the period of time himself, and due to the "visibility" of his role in aircraft movement, it is soon recognized by others. Individuals vary and some can maintain a plateau of excellence for some time, neither improving nor deteriorating. Others, once reaching the peak of excellence, deteriorate rapidly in one or more ways.

While it may not be scientifically correct to state that controllers face more stress than all other occupational groups, it is true that stress is a definite factor in this particular occupation. While it also may not be scientifically correct to state that controllers develop stress-related medical problems more often than other groups who are recognized as having equally stressful occupations, it is true that any controller who is psycho-physiologically susceptible to stress will demonstrate one or more stress related medical problems at some early point in his active career in air traffic control.

Dr. A. D. Catterson was a member of the Air Traffic Controller Career Committee, and he is the Deputy Director for Medical Research and Operations at National Aeronautics and Space Administration's (NASA), Manned Spacecraft Center. After comparing the results of a physiological study of the stress hormone levels measured in the urine of controllers serving in the O'Hare Terminal in Chicago with similar studies of NASA astronauts, he concluded: "These data provide clear cut evidence of a strong biochemical response by the air traffic controller personnel who were subject to the study to conditions which were perceived within their bodies as acutely stressful."

The air traffic controller health program was begun in 1966. It was designed to develop experience data to quantify environmental stress levels and the stress effects of control work upon humans.

Time and experience will have a definitive answer to the problem of stress effects. Nevertheless, the controller health records are beginning to provide a continuing and expanding picture of the individual's health on a career basis. At this time, a protocol for an exacting long range study of stress factors among air traffic control specialists is on contract. Should the protocol reveal the value and significance of such a study, as is expected, a long range program is planned.

Aside from the statistical evidence, the health examination program has two other beneficial purposes to fulfill. First, it enables the medical staff to recognize early evidence or symptoms of incipient illness when the condition is most amenable to treatment. Secondly, the examination provides a means for relief from a trying situation, for those few individuals who are especially susceptible to stress and who might otherwise not recognize their own limitations in this demanding environment.

#### *The Function of Age*

Age is closely associated with the phenomenon of decreasing skills. The Civil Aeromedical Institute has found that for new employees, age and success in air traffic training are inversely related. For those over age 35, the odds for successfully completing training are very poor. When age and experience are considered together, a man over 35 without previous air traffic experience has only a one in twenty chance of success.

The factors of aging and slow-down strongly suggest that after age 40 a controller has passed the height of his productivity in his career field. Normally, five years are required to develop a full professional level controller at a complex facility, that is, to progress from the GS-5 entrance level to the full performance level of GS-13. Currently, we are able to shorten this time by hiring those with previous experience and using a Civil Service Commission approved training agreement to permit rapid promotion.

Some minimum period of service after the employee has become trained should be expected from our training investment. However, if a controller begins to experience performance deterioration at 40 and should be removed from the complex facility before age 50, then we must consider a ceiling on the age of air traffic control trainees to obtain a reasonable return on our investment. There is a certain universality in recognizing the need to limit the age level for entrance into ATC work. Canada has imposed a limit of 30 years for entrance into this kind of work. England has imposed an entry age limit of 35 years and France, 26 years.

Present law prevents the establishment of such an age limit in the Federal service. The number of older applicants could be reduced by setting qualification standards on recency of experience and careful screening of applicants. These actions do not solve the basic problem, however. During a heavy recruiting push to meet manpower needs, the older trainee gets hired. Individuals retiring from the military service with long years of experience will nearly always meet recency of experience requirements. CSC registers have become clogged, on occasion, with these older applicants.

The upper age limit for controllers to continue in the service is as open as the entry level. The only limit is the mandatory civil service retirement age of 70 with 15 years of service.

The FAA now sets an age 60 limit for air carrier pilots. FAA studies on air traffic training show a strong negative chance of success as one gets older. Controllers, pilots, aviation medical examiners, as well as Air Traffic Service management officials, believe that 50 years and beyond is the grey zone for continuation in air traffic control work. England has established age 60 as the normal upper limit for air traffic control work. France has mandatory retirement at age 55 with optional retirement at age 50 after 15 years of service. Canada has a mandatory retirement age of 65.

As in the case of the entry age limit, no authority now exists within our civil service to establish an age limit less than age 70 or provide for earlier retirement than now established. These limits do not meet our needs and are, in fact, part of the problem. Many air traffic employees stay well beyond age 50 or 55 and into their 60's, mostly in the less complex facilities. Of the 1,573 controllers age 50 and over in all centers and terminals, only 275 are in the most complex. To provide rotation out of the complex facilities at a reasonably early age and after a limited number of years of service, there must be some place for them to go. However, employees in less complex facilities do not usually retire as soon as eligible, creating an obvious bottle neck.

#### *The Function of Human Expectation*

At age 40, an air traffic control specialist may reasonably be expected to have dependent children and to have achieved a standard of living that necessitates a continuing income approximately as great as that which he is currently earning.

Under present salary scales he will be earning between \$18,500 and \$24,200 per year including the premium pay for night, Sunday and holiday work. While these figures apply to those full performance controllers in the most complex facilities, those in slightly less complex facilities (GS-12 journeymen) can expect total compensation between \$15,700 and \$20,500. These figures are all exclusive of any overtime which might be earned.

Obviously, an individual who has achieved this standard of living will have attendant first mortgage, insurance, and other fixed costs. His present standard of living will likely have created other economic goals. He will want to provide adequately for his retirement years. He will want his children to gain the benefits of higher education. In short, he has become a full-fledged member of the upper middle socio-economic group and expects as a matter of "earned right" to continue to live in the style to which he has become accustomed.

The controller who reaches the point of skills deterioration is typically "young" by conventional work and retirement standards. He will also have another 10 to 20 years of physical well-being without the prospect of maintaining this standard of living he "earned" through the exacting and sometimes onerous work in the air traffic control system. He has the capacity, and many will have the desire, to continue to work and maximize his earnings. Moreover, should he be actually medically disqualified and forced to retire at this point in his career, he will, under the present system, receive an annuity approximately 40% of his current salary.

Furthermore, the opportunity to find other employment will be limited because his work experience as a controller is quite narrow and does not qualify him for alternative positions. For entry into the occupation a candidate must have three years of progressively responsible experience in technical administrative or other work and demonstrate an aptitude for air traffic control. He may also qualify by having a degree from a four-year college or university; however, he most often does not. A survey conducted by the Air Traffic Service in 1967 indicated that of 9,288 controllers responding, 4,920 had a high school education or less; 2,293 had attended college for 2 years or less; 1,528 attended college for more than 2 years but did not graduate; and 547 (less than 6%) had graduated from college.

The non-operational (that is, staff, support and management) positions in the Air Traffic Service total approximately 4,000 positions at headquarters, regional and area offices, the FAA Academy, and in the stations, terminals and centers. This total number includes planning, data processing and training positions in the facilities; positions in the area offices involving responsibility for administrative, personnel, budgeting and supply matters; positions as instructors at the FAA Academy; and positions in units concerned with pro-

cedures and management in the regional and headquarters offices.

Opportunities exist for reassignment into these positions; however, there is an important need to maintain high excellence, particularly in the first-line supervisory level in the facilities. Thus, while it appears there may be substantial opportunity for reassignment to the other positions in the Air Traffic Service, such is not always the case.

Likewise, the capabilities and interests of the individuals who conclude active service as controllers must be weighed in any search for alternate employment, whether within the Federal service or private industry. At the present time, we make substantial use of present authorities to create opportunities within FAA but this effort alone cannot solve the total problem.

In sum, one of the major problems facing us is the necessity to be fair to the individual who has devoted himself in his prime productive years to the needs of the air traffic system and yet maintain the integrity and safety of the service itself. The present prospect for the individual in the system—the lack of other alternative employment opportunities or an effective provision for retirement—is a *major* cause of the low morale that now pervades the air traffic work force. It poses, for the Federal Aviation Administration, an immediate need for ways of reducing or eliminating these bases of insecurity.

#### *Today's Situation*

Because of the critical importance of the human contribution to the system and the tremendous growth of aviation, certain human factor problems are being encountered in the system:

1. The most serious problem we face is maintaining necessary high performance levels in the system. The severe mental and physical stress placed on some controllers is due largely to the volume of air traffic and its uneven distribution across the country.

2. While a controller loses proficiency with age in any level of air traffic control facility, the loss tends to be more accelerated and to reach the critical point at an earlier age with controllers in the more complex facilities. To preserve his health and the safety and efficiency of the system, we would transfer the controller to a less complex facility. Under existing laws, however, most controllers would have their salaries reduced within two years after transfer, because of the grade differential between the two classes of facilities.

3. To a large degree the phenomena of early loss of controller proficiency can be mitigated if the period of service of air traffic controllers is limited. Existing laws and regulations neither allow us to establish maximum entry and retention ages for controllers nor do they provide an adequate retirement plan.

4. Although controllers must possess unique skills, no formal education or training beyond high school is required

for candidates. The skills obtained in air traffic work have little transference to other Federal occupations. A controller performs at a grade level that is high when compared to employees in the Federal Service generally. Thus, it becomes difficult to place him in another Federal position at the same grade level outside of the Air Traffic Service.

5. A similar situation occurs when a controller becomes medically disqualified and is separated from the service. Due to the modest formal education requirement and the fact that the Department of Transportation is virtually a monopoly employer of air traffic controllers, a separated employee is not likely to obtain employment approximating his government salary without extensive additional training.

6. No matter how statistically or medically difficult the proof of actual skill deterioration among controllers may be, the debilitating effects of continued performance are well known. This perception has a direct bearing on employee morale and can have a serious impact on efforts to recruit the thousands of competent controllers that are needed.

#### SECTION ANALYSIS

The first section of the committee amendment amends Chapter 21 of title 5, United States Code, by adding a new Section 2109, setting forth a definition of "air traffic controller" and "controller" for the purpose of title 5, United States Code. The Terms are defined to mean a Department of Transportation employee actively engaged in the control of air traffic or in the immediate supervision of an employee engaged in that activity in an air traffic control facility.

The definition includes those assigned to air route traffic control centers and air traffic control towers operated by the Federal Aviation Administration, but would exclude those in Federal Aviation Administration flight service station facilities. The new section also authorizes the Secretary of Transportation to prescribe regulations to determine the application of the definition to employees of the Department of Transportation.

Section 2 of the reported bill amends Chapter 33 of title 5, United States Code, by adding new "Subchapter VII—Air Traffic Controllers", including sections 3381–3385.

New section 3381(a) of title 5 authorizes the Secretary of Transportation to provide training, with the written agreement of a controller who has career tenure with at least 5 years of controller service, if the Secretary first determines that the controller (1) is medically disqualified for duties as a controller; (2) is unable to maintain technical proficiency; or (3) must be removed for his physical or mental well-being.

The training to be provided shall not exceed 2 years duration, but must be sufficient to assist the controller in qualifying for employment in another position.

Subsection (b) authorizes the Secretary to provide training in either a Government or non-Government facility for employment in the Department of Transportation, in another Government agency, or outside the Government.

Subsection (c) provides that a controller assigned to training under the section shall continue to be paid at the same rate of basic pay plus any pay increases by or under statute, and be excluded from all staffing limitations.

Subsection (d) allows a controller who has completed training to be assigned to other duties in the Department of Transportation; to be transferred to another Government agency; or involuntarily separated.

It further provides that an involuntary separation under this subsection shall not be "removal for cause on charges of misconduct, delinquency, or inefficiency" so as not to deprive the controller of his full annuity rights under 5 U.S.C. 8336 or severance pay under 5 U.S.C. 5595.

Subsection (e) authorizes the Secretary to pay for or reimburse a controller for all or part of the necessary training expenses directly related to his training, such as travel and per diem instead of subsistence, costs of transportation of his immediate family, household goods, and personal effects, tuition, library and lab services, and books and materials.

Subsection (f) exempts training under the new section from the new section from the provisions of chapter 41 of title 5, except for sections 4105(a) (allows agreements for training without regard to competitive bidding requirements); 4107(a) and (b) (prohibits training for subversive activities or in facilities whose activities include lobbying or politics); and 4111 (allows acceptance of gifts and scholarships).

Subsection (g) is a savings provision to make it clear that the new training authority does not affect the authority of the Secretary to provide training under Chapter 41 of title 5.

New section 3382 of title 5 provides that, when an air traffic controller is eligible for an immediate annuity under subchapter III of chapter 83 of title 5, he may be separated involuntarily from the service for retirement if the Secretary determines that the separation is in the interest of aviation safety, efficient control of air traffic, or the controller's health. The separation shall not become final, without the controller's consent, until the last day of the second month after receipt of notification of the determination under section 3382 or the last day of the month in which a final decision is issued by a board of review under new section 3383(c), whichever is later.

The determinations of, or action taken by, the Secretary are not subject to the appeals procedures under chapter 75 of title 5 but are subject to the new procedures under new section 3383.

New section 3383 of title 5 prescribes the following procedures for an appeal from a determination under new section 3381(a) and 3382.

Subsection (a) requires the Secretary to give the controller a written notice of his determination and the reasons therefor. Upon receipt of the notice, the controller has 15 days within which to file a written request for reconsideration of the determination. Failure to so file the request renders the determination final.

Subsection (b) prescribes that if a request is filed and the determination is not rescinded by the Secretary within 15 days, he shall convene a board of review consisting of 3 persons, one designated by

the controller, one by the Secretary, and one by the Chairman of the Civil Service Commission, who shall be Chairman.

Subsection (c) requires the board to review the determination and within 30 days from the date of convening, either approve or rescind the determination by the Secretary. The decision of the board is final and binding on the parties.

Subsection (d) provides that the appeal procedure of new section 3383 is the sole administrative remedy available to the controller, but that all other review procedures provided under any other law shall apply, except that the appeal procedures under chapter 75 of title 5 shall not apply to a determination or action involving an involuntary separation under Section 3382.

New section 3384 of title 5 requires the Secretary of Transportation to prescribe regulations relating to eligibility and type of training to be provided under new section 3381. It also prescribes that in providing training the Secretary shall consider, among other things, length of service, previous occupational skills and education, and the needs and desires of controllers.

New section 3385 provides that the provisions of the new subchapter do not limit the present statutory authority of the Secretary of Transportation to (1) reassign temporarily a controller to other duties in the interest of air safety or health of the controller, or (2) to reassign permanently or separate a controller.

Section 2(b) of the reported bill contains conforming technical amendment relating to the analysis of chapter 33 of title 5, United States Code.

Section 3 of the reported bill amends section 8335 of title 5 by adding a new subsection (f) which provides for the mandatory separation of a controller when he becomes age 56. The Secretary may exempt a controller who possesses exceptional skills and experience from this compulsory separation requirement until age 61. A controller to be separated under this provision is entitled to a 60-day written notice.

The separation is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.

Section 4 of the reported bill amends section 8336 of title 5 by inserting a new subsection (e) and redesignating existing (e), (f), and (g) as (f), (g), and (h), respectively.

This new subsection provides entitlement to an immediate annuity to an employee who is either voluntarily or involuntarily separated after completing 25 years of service as an air traffic controller, or having completed at least 20 years of service as an air traffic controller and attained age 50. Other provisions of existing law extend similar benefits only when an employee is involuntarily separated.

Section 5 of the bill amends section 8339 of title 5 by inserting a new subsection (e) and redesignating existing (e)-(m) as (f)-(n), respectively.

This new subsection provides that the annuity for an employee retiring under new subsection 8336(e) as added by section 4 of the bill be computed in accordance with the formula prescribed in existing subsection 8339(a), but that such basic annuity be not less than 50 percent of the retiree's average pay. While this 50 percent benefit is not

subject to reduction by reason of age, such minimum rate does not apply if the employee has received training as provided by section 3381.

Section 6 of the bill contains technical amendments to references in existing sections 8332(b)(3), 8334(g)(5), 8339, and 8344(a)(3)(A), so as to reflect the addition of new subsection 8339(e), and the redesignation of present 8339(e)-(m) as 8339(f)-(n).

Section 7 of the reported bill provides that new subsection 8335(f) of title 5, mandatory separation at age 56, shall not apply to a controller who was appointed prior to the date of enactment of this legislation.

Section 8 requires the Secretary of Transportation to submit a report to Congress, within 5 years of enactment, of his operations under the Act. The report must include a statement of the effectiveness of the Act in meeting the needs of the controller career program and the air traffic control system, and any additional recommendations he deems necessary for sound management of the program of the system.

Section 9 of the bill provides that the Act becomes effective 90 days after the date of enactment.

#### Cost

The estimated cost of this legislation to cover the unfunded liability in the retirement system was provided by the Civil Service Commission.

The estimated cost to cover the costs of training and reassignment was provided by the Department of Transportation.

#### ESTIMATED COSTS

[In millions of dollars]

Fiscal years	Training and reassignment	Retirement	Total
1972	8.9	33.7	42.6
1973	15.4	33.7	49.1
1974	17.9	33.7	51.6
1975	20.3	33.7	54.0
1976	22.7	33.7	56.4

The Committee does not have any basis upon which to dispute the accuracy of the estimated costs of this legislation.

#### OFFICIAL AGENCY RECOMMENDATION

There is set forth below the official recommendation from the Secretary of Transportation to the Congress on air traffic control legislation, which is the basis for this legislation.

THE SECRETARY OF TRANSPORTATION,  
Washington, D.C., April 29, 1971.

HON. CARL ALBERT,  
Speaker of the House of Representatives,  
Washington, D.C.

DEAR MR. SPEAKER: Enclosed for introduction and referral to the appropriate Committee is a draft bill—

"To amend title 5, United States Code, to provide for maximum entrance and retention ages, training, and early retirement for air traffic controllers, and for other purposes."

The purpose of the bill is to provide the Secretary of Transportation greater flexibility in the management of the air traffic control work force. I submitted a similar proposal to the 91st Congress.

Air traffic control work is a unique vocation, one offering many advantages yet one involving a number of serious drawbacks. This work offers an individual the challenging opportunity to be involved in one of the most dynamic industries of our time. The individual who enters this field also faces the sobering responsibility of safeguarding airmen and air travelers. In large measure, their well-being depends upon the proper performance of the air traffic control system. The basic role of the controller is to facilitate the safe and efficient flow of air traffic in that system. Civil aviation and technological achievements within the industry have advanced dramatically in recent years. The increasing demands that the expanding aviation community is placing upon the air traffic control system make the job of the controller more complex and increase the burden he bears. In recognition of this, controllers are relatively well paid, when compared to other occupational specialties with similar entry requirements. Promotion also is relatively rapid for those who are able to progress through the various stages to the journeyman level. Additional remuneration is available for working overtime and at night and on holidays, which many controllers are called upon to do.

Perhaps the most serious drawbacks of the work, however, are those having a long-range effect. The Department of Transportation is practically the sole employer of controllers, and the skills learned in control work have very limited value in other lines of work. The initial challenge of the work tends to become less attractive and more burdensome as time on the job increases. If he becomes dissatisfied with or unable to continue in his work, there is little opportunity for the controller to gain employment in another field at anywhere near the salary he has become accustomed to drawing.

The controller is a shift worker. He operates on an hour-to-hour basis, seeing to the safe movement of air traffic operations during his shift. He meets problems on a case-by-case basis and the picture seldom changes except for the increase in the flow of traffic. He rotates from shift to shift and is expected to be available from time to time for overtime work.

Having taken into consideration the nature of the controller's work, the remuneration and other benefits he can derive from it, the need for him to maintain the highest possible safety standards in controlling air traffic, and the increasing workload that has been thrust upon him, the Department of Transportation undertook a study into the need for improving the career system for air traffic controllers. Primary considerations in the conduct of the study were the need to promote the safety of flight, to provide the efficient control of air traffic, to provide the Secretary with a number of options in managing the controller work force, and to ensure the controller fair treatment, particularly in those cases where he has been on the job for a substantial time. The culmination of the study was the Report of the special Air Traffic Controller Career Committee. This bill would incorporate into title 5, United States Code, the amendments necessary to implement recommendations of the Committee requiring legislative action. The bill contains four principal provisions:

*First*, the Secretary of Transportation would be authorized, with the concurrence of such agent as the President may designate, to

establish a maximum age for entry in Department of Transportation air traffic control positions. Initially, the Department intends to provide that a person with no previous experience could not enter an air traffic controller position after reaching his 31st birthday. However, we also intend to grant exemptions and employ persons up to their 36th birthday, based upon previous related experience. Exemptions would not be granted to large groups on an "across-the-board" basis, but would cover small groups or single individuals. No exemptions are contemplated to persons who have reached their 36th birthday. The bill also establishes a maximum age for retention in Departmental air traffic control positions. The bill provides that an employee could not remain in an air traffic controller position after becoming 56 years of age. The Secretary would be authorized to retain a controller until his 61st birthday, based upon possession of exceptional skills and experience as determined by the Secretary. The reason for this specific provision is discussed below.

*Second*, the bill authorizes the Secretary to provide two years, or less, of training to a career-tenure-controller, if the Secretary first determines that the controller (1) has become medically disqualified for his position; (2) must be displaced from a particular air traffic facility (such as a high traffic density facility) in the interest of aviation safety or efficiency or the health of the controller; or (3) must be removed from controller duties altogether because of inability to maintain technical proficiency in his work. During training, the employee would receive the same base pay he last received as a controller.

*Third*, the bill provides that the Secretary may assign, reassign or demote a controller who has received training to other duties in the Department of Transportation at the same or a lower grade; or the Secretary may release the controller for transfer to another Executive agency. If the controller is not placed with an Executive agency, he would be separated from the service. The bill also provides that, if he first makes one of the three determinations enumerated above, the Secretary may assign or reassign a controller (whether or not he receives training) to another air traffic facility or to different duties in the Department of Transportation.

*Finally*, the bill would entitle an employee to an annuity (minimum: 50 percent of the average of his highest three years' base pay) after he completes 25 years of controller service or after he completes 20 years of controller service and reaches 50 years of age. The Secretary would be authorized to initiate the retirement of an active controller under this provision in the interest of aviation safety, efficiency, or the controller's health.

The bill also would require the Secretary of Transportation to report to the Congress during the fifth year after enactment regarding the effectiveness of the provisions in meeting the needs of the controller career program and the air traffic control system. The provisions of the bill would take effect 90 days after enactment.

Our principal concern is with the use of older personnel in the controller positions. This is evident from the thrust of all these proposals, and is the basis for a specific maximum retention age provision. We believe that an individual should embark on a career as a controller while in his twenties, and in the usual case, retire or change to another line of work before he becomes 56 years of age. This makes him avail-

able during his most productive stage and while his interest, stamina, and general health are at their highest level.

As a general rule, we have found that our controllers simply do not maintain their proficiency as they progress through the second half of the normal period of service of a career employee. In some cases the work becomes too stressful. In other cases, conditions of health force the controller to leave the work altogether. The maximum retention age level, with the early retirement and retraining provisions we are proposing, would give the controller the assurance of eventual relief from a long span of control work, and an opportunity to turn to a new career at a time when he otherwise might find it necessary to remain in controller work under near intolerable conditions. The provisions also will permit the Secretary to maintain a safer and more proficient controller work force.

We estimate the cost of this proposed legislation to be \$17.6 million in fiscal year 1972 (assuming a July 1, 1971 implementation), and that cost would rise to \$35.2 million in fiscal year 1976. We will provide more detailed cost information to the appropriate Committee.

For all these reasons, we urge that the Congress *promptly* enact this legislation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this proposed legislation to the Congress.

Sincerely,

JOHN A. VOLPE.

Enclosures.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

### TITLE 5 OF THE UNITED STATES CODE

\* \* \* \* \*

#### Part III—EMPLOYEES

\* \* \* \* \*

#### Subpart A—General Provisions

#### Chapter 21—DEFINITIONS

Sec.

- 2101. Civil service; armed forces; uniformed services.
- 2102. The competitive service.
- 2103. The excepted service.
- 2104. Officer.
- 2105. Employee.
- 2106. Member of Congress.

2107. Congressional employee.  
 2108. Veteran; disabled veteran; preference eligible.  
 2109. *Air traffic controller.*

\* \* \* \* \*

### § 2109. *Air traffic controller*

*For the purpose of this title, "air traffic controller" or "controller" means an employee of the Department of Transportation who is actively engaged in the control of air traffic, or who is the immediate supervisor of an employee actively engaged in the control of air traffic, in an air traffic control facility. The Secretary of Transportation may prescribe regulations to determine the application of this section to the employees of the Department.*

\* \* \* \* \*

## Subpart B—Employment and Retention

\* \* \* \* \*

## Chapter 33—EXAMINATION, SELECTION, AND PLACEMENT

\* \* \* \* \*

### SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

Sec.

3381. *Training.*  
 3382. *Involuntary separation for retirement.*  
 3383. *Determinations; review procedures.*  
 3384. *Regulations.*  
 3385. *Effect on other authority.*

\* \* \* \* \*

### SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

#### § 3381. *Training*

(a) *If an air traffic controller with career tenure who has completed 5 years of service as a controller is to be removed from duties as a controller because the Secretary of Transportation has determined—*

- (1) *he is medically disqualified for duties as a controller;*
- (2) *he is unable to maintain technical proficiency as a controller; or*

(3) *such removal is necessary for the preservation of the physical or mental well-being of the controller;*

*the Secretary may provide, with the written agreement of the controller, training to assist the controller in qualifying for employment in another position but such training shall not exceed 2 years duration.*

(b) *The Secretary may provide training under this section in a Government or non-Government facility for employment in the Department of Transportation, in another Government agency, or outside the Government.*

(c) During the period of training under this section, a controller shall—

- (1) be retained at his last assigned grade and rate of basic pay as a controller;
- (2) be entitled to each increase in rate of basic pay provided by or under statute; and
- (3) be excluded from the staffing limitations otherwise applicable.

(d) Upon completion of training under this section, a controller may be—

- (1) assigned to other duties in the Department of Transportation;
- (2) released for transfer to another Government agency; or
- (3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purpose of determining entitlement to severance pay under section 5595 of this title or entitlement to immediate retirement under section 8336 of this title.

(e) The Secretary, without regard to section 529 of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including, but not limited to, among the expenses, the necessary cost of—

- (1) travel and per diem instead of subsistence under subchapter I of chapter 57 of this title;
- (2) transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking, under section 5724 of this title, when the estimated cost of transportation and related services are less than the estimated aggregate per diem payments for the period of training;
- (3) tuition and matriculation fees;
- (4) library and laboratory services;
- (5) purchase or rental of books, materials, and supplies; and
- (6) other services or facilities directly related to the training of the controller.

(f) The provisions of sections 4105(a), 4107 (a) and (b), and 4111 of chapter 41 of this title shall apply to the training provided under this section, but no other provisions of such chapter 41 shall apply to training provided under this section.

(g) The provisions of this section shall not affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law.

### **§ 3382. Involuntary separation for retirement**

An air traffic controller who is eligible for an immediate annuity under subchapter III of chapter 83 of this title may be separated involuntarily from the service for retirement if the Secretary of Transportation determines that the separation of the controller is necessary in the interest of—

- (1) aviation safety;
- (2) the efficient control of air traffic; or
- (3) the preservation of the physical or mental well-being of the controller.

*Chapter 75 of this title does not apply to a determination or action under this section. The involuntary separation of a controller under this section shall not become final, without the consent of the controller, until the last day of the second month which immediately follows the day on which the controller receives a notification of the determination by the Secretary under this section, or, if a review is requested under section 3383 of this title, the last day of the month in which a final decision is issued by a board of review under section 3383(c) of this title, whichever is later.*

### **§ 3383. Determinations; review procedures**

*(a) A controller subject to a determination by the Secretary of Transportation under section 3381 (a) or section 3382 of this title, shall be furnished a written notice of the determination and the reasons therefor, and a notification that the controller has 15 days after the date of receipt of the notification within which to file a written request for reconsideration of the determination. Unless the controller files such request within the 15 days, or unless the determination is rescinded by the Secretary within the 15 days, the determination of the Secretary shall be final.*

*(b) If the Secretary does not rescind his determination within 15 days after his receipt of the written request filed by the controller under subsection (a) of this section, the Secretary shall convene a board of review, consisting of—*

- (1) a person designated by the controller;*
- (2) a representative of the Department of Transportation designated by the Secretary; and*
- (3) a representative of the Civil Service Commission, designated by the Chairman, who shall serve as chairman of the board of review.*

*(c) A board of review convened under subsection (b) of this section shall review the determination of the Secretary and, within a period of 30 days after being convened, shall issue its findings and furnish copies thereof to the Secretary and the controller. The board may approve or rescind the determination of the Secretary. A decision by the board under this subsection is final. The Secretary shall take such action as may be necessary to carry out the decision of the board.*

*(d) Except as provided under section 3382 of this title, the review procedure of this section is in addition to any other review or appeal procedures provided under any other provision of law, but is the sole and exclusive administrative remedy available to a controller from the Department of Transportation.*

### **§ 3384. Regulations**

*The Secretary of Transportation shall prescribe regulations necessary to carry out the provisions of this subchapter. Regulations pertaining to eligibility for and type and kind of training to be provided under section 3381 of this title shall be based on such considerations as the Secretary considers appropriate, including, but not limited to, length of service, previous occupational skills and education, training needs, and desires of controllers to be trained.*

### § 3385. *Effect on other authority*

*This subchapter does not limit the authority of the Secretary of Transportation to reassign temporarily an air traffic controller to other duties with or without notice, in the interest of safe or efficient control of air traffic or the physical or mental well-being of the controller; or to reassign permanently or separate a controller under any other provision of law.*

\* \* \* \* \*

## Subpart G—Insurance and Annuities

\* \* \* \* \*

## CHAPTER 83—RETIREMENT

\* \* \* \* \*

### SUBCHAPTER III—CIVIL SERVICE RETIREMENT

\* \* \* \* \*

### § 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

- (1) employment as a substitute in the postal field service;
- (2) service in the Pan American Sanitary Bureau;
- (3) subject to section 8334(c) and [8339(h)] 8339(i) of this title, service performed before July 19, 1960, as an employee of a county committee established under section 590h(b) of title 16 or of a committee or an association of producers described by section 610 (b) of title 7;
- (4) service as a student-employee as defined by section 5351 of this title only if he later becomes subject to this subchapter;
- (5) a period of satisfactory service of a volunteer or volunteer leader under chapter 34 of title 22 only if he later becomes subject to this subchapter;
- (6) employment under section 709 of title 32, United States Code, or any prior corresponding provision of law;
- (7) a period of service of a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 only if he later becomes subject to this subchapter; and
- (8) subject to sections 8334(c) and 8339(h) of this title, service performed on or after February 19, 1929, and prior to the effective date of section 442 of the Legislative Reorganization Act of 1970, as a United States Capitol Guide.

\* \* \* \* \*

### § 8334. Deductions, contributions, and deposits

(a) (1) \* \* \*

\* \* \* \* \*

(g) Deposit may not be required for—

- (1) service before August 1, 1920;
  - (2) military service;
  - (3) service for the Panama Railroad Company before January 1, 1924;
  - (4) service performed before January 1, 1950, by natives of the Pribilof Islands in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands; or
  - (5) days of unused sick leave credited under section 8339 [(m)]
- (n) of this title.

\* \* \* \* \*

### § 8335. Mandatory separation

(a) Except as otherwise provided by this section, an employee who becomes 70 years of age and completes 15 years of service shall be automatically separated from the service. The separation is effective on the last day of the month in which the employee becomes 70 years of age or completes 15 years of service if then over that age, and pay ends from that day.

(b) The employing office shall notify each employee under its direction of the date of his separation from the service at least 60 days in advance thereof, and subsection (a) of this section does not take effect without the consent of the employee until 60 days after he is so notified.

(c) The President, by Executive order, may exempt an employee from automatic separation under this section when in his judgment the public interest so requires.

(d) The automatic separation provisions of this section do not apply to—

- (1) an individual named by a statute providing for the continuance of the individual in the service;
- (2) a Member;
- (3) a Congressional employee; or
- (4) an employee in the judicial branch appointed to hold office for a definite term of years.

(e) This section applies to an employee of The Alaska Railroad in Alaska, and to an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Company or the Canal Zone Government, who becomes 62 years of age and completes 15 years of service in Alaska or on the Isthmus of Panama.

(f) *An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age. The Secretary of Transportation, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary*

*of Transportation shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.*

**§ 8336. Immediate retirement**

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) An employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position, who is separated from the service after becoming 50 years of age and completing 20 years of service in the performance of these duties is entitled to an annuity if the head of his agency recommends his retirement and the Civil Service Commission approves that recommendation. The head of the agency and the Commission shall consider fully the degree of hazard to which the employee is subjected in the performance of his duties, instead of the general duties of the class of the position held by the employee. For the purpose of this subsection, "detention" includes the duties of—

(1) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(2) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(3) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(4) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Commission) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation.

(d) An employee who is involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to a reduced annuity.

(e) *An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity.*

**[e]** (f) An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

**[f]** (g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member who is separated from the service after becoming 55 years of age (but before becoming 60 years of age) and completing 30 years of service is entitled to a reduced annuity. A Member who is separated from the service, except by resignation or expulsion, after completing 25 years of service or after becoming 50 years of age and (1) completing 20 years of service or (2) serving in 9 Congresses is entitled to a reduced annuity.

**[g]** (h) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

\* \* \* \* \*

### § 8339. Computation of annuity

(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is—

(1)  $11\frac{1}{2}$  percent of his average pay multiplied by so much of his total service as does not exceed 5 years; plus

(2)  $13\frac{1}{4}$  percent of his average pay multiplied by so much of his total service as exceeds 5 years but does not exceed 10 years; plus

(3) 2 percent of his average pay multiplied by so much of his total service as exceeds 10 years.

However, when it results in a larger annuity, 1 percent of his average pay plus \$25 is substituted for the percentage specified by paragraph (1), (2), or (3) of this subsection, or any combination thereof.

(b) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had—

(1) at least 5 years' service as a Congressional employee or Member or any combination thereof; and

(2) deductions withheld from his pay or has made deposit covering his last 5 years of civilian service;

his annuity is computed, with respect to his service as a Congressional employee, his military service not exceeding 5 years, and any Member service, by multiplying  $21\frac{1}{2}$  percent of his average pay by the years of that service.

(c) The annuity of a Member, or former Member with title to Member annuity, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had at least 5 years' service as a Member or Congressional employee or any combination thereof, his annuity is computed with respect to—

(1) his service as a Member and so much of his military service as is creditable for the purpose of this paragraph; and

(2) his Congressional employee service;

by multiplying  $21\frac{1}{2}$  percent of his average pay by the years of that service.

(d) The annuity of an employee retiring under section 8336(c) of this title is 2 percent of his average pay multiplied by his total service.

(e) *The annuity of an employee retiring under section 8336(e) of this title is computed under subsection (a) of this section. That annuity may not be less than 50 percent of the average pay of the employee unless that employee received training under section 3381 of this title.*

**[e]**(f) the annuity computed under subsections (a)–**[d]**(e) of this section may not exceed 80 percent of—

- (1) the average pay of the employee; or
- (2) the greater of—

(A) the final basic pay of the Member; or

(B) the final basic pay of the appointive position of a former Member who elects to have his annuity computed or re-computed under section 8344(b) (1) of this title.

**[f]**(g) The annuity of an employee or Member retiring under section 8337 of this title is at least the smaller of—

- (1) 40 percent of his average pay; or

(2) the sum obtained under subsections (a)–(c) of this section after increasing his service of the type last performed by the period elapsing between the date of separation and the date he becomes 60 years of age.

**[g]**(h) The annuity computed under subsections (a), (b), and **[e]**(f) of this section for an employee retiring under section 8336(d) of this title is reduced by  $\frac{1}{6}$  of 1 percent for each full month the employee is under 55 years of age at the date of separation. The annuity computed under subsections (c) and **[e]**(f) of this section for a Member retiring under the second or third sentence of section 8336 **[f]**(g) of this title or the third sentence of section 8338(b) of this title is reduced by  $\frac{1}{12}$  of 1 percent for each full month not in excess of 60 months, and  $\frac{1}{6}$  of 1 percent for each full month in excess of 60 months, the Member is under 60 years of age at the date of separation.

**[h]**(i) The annuity computed under subsections (a)–**[g]**(h) of this section is reduced by 10 percent of a deposit described by section 8334(c) of this title remaining unpaid, unless the employee or Member elects to eliminate the service involved for the purpose of annuity computation.

**[i]**(j) The annuity computed under subsections (a)–**[h]**(i) of this section for a married employee or Member retiring under this subchapter, or any portion of that annuity designated in writing for the purpose of section 8341(b) of this title by the employee or Member at the time of retirement, is reduced by  $2\frac{1}{2}$  percent of so much thereof as does not exceed \$3,600 and by 10 percent of so much thereof as exceeds \$3,600, unless the employee or Member notifies the Civil Service Commission in writing at the time of retirement that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of this title.

**[j]**(k) (1) At the time of retiring under section 8336 or 8338 of this title, an unmarried employee or Member who is found to be in good health by the Commission may elect a reduced annuity instead of an annuity computed under subsections (a)–**[h]**(i) of this section and name in writing an individual having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The annuity of

the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent.

(2) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to his spouse and who later marries, may irrevocably elect, in a signed writing received in the Commission within 1 year after he marries, a reduction in his current annuity as provided in subsection (i) of this section. His reduced annuity is effective the first day of the month after his election is received in the Commission. The election voids prospectively any election previously made under paragraph (1) of this subsection.

**[k]**(l) The annuity computed under subsections (a)–**[j]**(k) of this section for an employee who is a citizen of the United States is increased by \$36 for each year of service in the employ of—

(1) the Alaska Engineering Commission, or The Alaska Railroad, in Alaska between March 12, 1914, and July 1, 1923; or

(2) the Isthmian Canal Commission, or the Panama Railroad Company on the Isthmus of Panama between May 4, 1904, and April 1, 1914.

**[l]**(m) In determining service for the purpose of computing an annuity under each paragraph of this section, 45 per centum of each year, or fraction thereof, of service referred to in section 8332(b) (6) which was performed prior to the effective date of the National Guard Technicians Act of 1968 shall be disregarded.

**[m]**(n) In computing any annuity under subsections (a)–**[d]**(e) of this section, the total service of an employee who retires on an immediate annuity or dies leaving a survivor or survivors entitled to annuity includes, without regard to the limitations by subsection **[e]**(f) of this section, the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter.

\* \* \* \* \*

#### § 8341. Survivor annuities

(a) \* \* \*

\* \* \* \* \*

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962, of an annuity computed under section 8339(a)–**[h]**(i) of this title as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339**[i]**(j) of this title, unless the employee or Member has notified the Commission in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(j) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the spouse, widow, or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the spouse, widow, or widower—

(A) dies; or

(B) remarries before becoming 60 years of age.

(c) The annuity of a survivor named under section 8339(c)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)—(e) and (h)(f) and (i) of this title as may apply with respect to the employee or Member, except that, in computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 60 years of age.

\* \* \* \* \*

#### § 8344. Annuities and pay on reemployment

(a) If an annuitant receiving annuity from the Fund, except—

(1) a disability annuitant whose annuity is terminated because of his recovery or restoration of earning capacity;

(2) an annuitant whose annuity is based on an involuntary separation from the service other than an automatic separation;

or

(3) a Member receiving annuity from the Fund; becomes employed after September 30, 1956, or on July 31, 1956, was serving, in an appointive or elective position, his service on and after the date he was or is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay. An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. If the annuitant serves on a full-time basis, except as President, for at least 1 year in employment not excluding him from coverage under section 8331(1) (i) or (ii) of this title—

(A) his annuity on termination of employment is increased by an annuity computed under section 8339 (a), (b), (d), **[(g), and (h)]** (e), (h), and (i) of this title as may apply based on the period of employment and the basic pay, before deduction, averaged during that employment; and

\* \* \* \* \*

